

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

April 16, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2688-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CARL MITCHELL,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: DIANE S. SYKES, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Carl Mitchell pled guilty to burglary, party to a crime, in violation of §§ 943.10(1)(a) and 939.05, STATS. The trial court imposed the maximum sentence of ten years in prison, consecutive to the sentence he was then serving. The court left open the amount of restitution pending further investigation.

The state public defender appointed Brian Findley to represent Mitchell on appeal. Findley filed a no merit report pursuant to RULE 809.32, STATS., and *Anders v. California*, 386 U.S. 738 (1967). Mitchell received a copy of the no merit report and filed a response.

Mitchell and an accomplice were inside a church when police responded to the church's burglary alarm. A speaker's amplifier, which was missing from the church, was found in their vehicle. Mitchell agreed to plead guilty in exchange for the prosecution's agreement to request a presentence investigation and to recommend a concurrent prison sentence. In his response to the no merit report, Mitchell claimed that he had been drinking, which he blamed on the recent death of his mother.

The no merit report addresses whether Mitchell's guilty plea was knowingly, intelligently, and voluntarily entered. Findley concludes that this possible issue has no arguable merit. Based upon our independent review of the record, we conclude that his analysis of the issue is correct.

In order to assure that a plea is knowingly, voluntarily, and intelligently entered, the trial court is obligated by § 971.08(1)(a), STATS., to ascertain that a defendant understands the nature of the charges to which he or she is pleading, the potential punishment for those charges, and the constitutional rights being relinquished by entering a guilty plea. *See State v. Bangert*, 131 Wis.2d 246, 260-62, 389 N.W.2d 12, 20-21 (1986). The plea colloquy between Mitchell and the trial court satisfied this standard. Additionally, the court adduced that an adequate factual basis existed for finding Mitchell guilty of the charges. *See* § 971.08(1)(b).

The no merit report and Mitchell's response address whether the sentence imposed by the trial court was unduly harsh. Findley concludes that this possible issue has no arguable merit. Mitchell alleges that he agreed to plead guilty because plea counsel said he would receive a five-year sentence. Mitchell contends that imposition of the maximum sentence was unduly harsh because the building was a commercial building, not a residence, and that the sentence was based on inaccurate information.

Regarding Mitchell's allegation that the trial court relied on inaccurate information, we note that plea counsel represented to the court that he and Mitchell had reviewed the report of the presentence investigation on multiple occasions and that no additions or corrections were needed. If any information was inaccurate or misleading, Mitchell was obligated to advise the court of that fact at the sentencing hearing.

When a defendant claims a sentence is unduly harsh, this court first determines if the trial court exercised its discretion and then whether the sentence was excessive. *State v. Glotz*, 122 Wis.2d 519, 524, 362 N.W.2d 179, 182 (Ct. App. 1984). The exercise of discretion requires the court to consider the gravity of the offense, the character of the offender, and the need to protect the public. *Id.* Appellate courts are reluctant to interfere with a trial court's sentence, and a defendant must show an unreasonable or unjustifiable basis for the sentence. *Id.*

In the present case, the court considered the primary factors during its lengthy colloquy. The court considered burglary of a church to be very serious, noting both the members' loss of a sense of security and the respected place of churches in society. Additionally, the court viewed Mitchell's criminal record and personal history as evidence that he was a clear danger to the physical safety and property of the community. Discretion was properly exercised.

The final question is whether the sentence is "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." *Ocanas v. State*, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975). In light of the trial court's comments during sentencing and our deference to the trial court, *see id.* at 183, 233 N.W.2d at 460, we cannot conclude that the sentence is excessive.

Our independent review of the record did not disclose any additional potential issues for appeal. Therefore, any further proceedings on Mitchell's behalf would be frivolous and without arguable merit within the meaning of *Anders* and RULE 809.32(1), STATS. Accordingly, the judgment of

conviction is affirmed, and Findley is relieved of any further representation of Mitchell on this appeal.

By the Court. – Judgment affirmed.